93-877

Supreme Court, U.S.
FILED
DEC - 3 1993
OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

EDITH MAE GRACEY,
PETITIONER

VS.

BARBARA M. DAY,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

EDITH MAE GRACEY, pro se
512 MIFFLIN BOULEVARD
SHILLINGTON, PA 19607
(215) 777-8756

QUESTIONS PRESENTED

1. Whether the decision and order of the District Court denied petitioner Edith Gracey due process by issuing the order before her submittal of her scheduled Reply Brief.

2. Whether petitioner was denied due process when the District Court withheld portions of the record from the Third Circuit Appeals Court.

3. Whether 42 Pa.C.S.A. 8101 and 41 P.S.202 are the controlling laws on the issue of post-judgment rate of interest when a contract is silent.

PARTIES TO THE PROCEEDINGS

Parties listed in the proceedings below who appear on the docket are Dale Lapp, Esquire (counsel for Trustee Frederick Reigle,Esquire) who advised the Office of the Clerk he would not participate. Trustee Frederick Reigle, Esquire and U.S.Trustee Frederic Baker did not respond to a letter from the Office of the Clerk. Therefore, the only party to this proceeding would be Respondent Barbara M. Day (counsel: Mark Tunnell, 119 North High Street, West Chester,Pa.19381;telephone 215-696-8225).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....iv

OPINIONS BELOW..... 1

JURISDICTION..... 1

STATUTES INVOLVED..... 2

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING PETITION..... 6

I. DUE PROCESS WAS DENIED GRACEY SINCE DISTRICT COURT ISSUED DECISION PRIOR TO SUBMITTAL OF HER SCHEDULED REPLY BRIEF.. 6

II. DUE PROCESS WAS DENIED WHEN THE DISTRICT COURT WITHHELD GRACEY'S PORTIONS OF RECORD FROM THE THIRD CIRCUIT..... 9

III. CONTROLLING LAWS SHOULD BE 42 Pa.C.S.A.8101 and 41PS 202 ON POST-JUDGMENT INTEREST RATE.11

CONCLUSIONS..... 16

APPENDICES

A: Third Circuit Order.....A-1

B; District Court Order.....B-1

C: Bankruptcy Court Order.....C-1

D: Third Circuit Rehearing.....D

E: District Court Docket.....E-1

TABLE OF AUTHORITIES

CRANE AUTOMOTIVE,98 BR 236(BkyWDPa.1989)...13

IN RE; HERBERT,86 BR 433(BKY EDPa.1988)....13

IN RE; RORIE,98 BR 219(Bky EDPa.1989).....13

U.S. v. RON PAIR ENTERPRISES,INC.,489 U.S. 235,103,L.Ed 2d,290,109 S.Ct.1029(1989)..15

STATUTES

U.S.CONSTITUTION,AMENDMENT 5

42 PA.C.S.A. 8101

41 P.S. 202

FRAP RULE 34

BANKRUPTCY RULE 8009(a)(3)

FRAP RULE 28(c)

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

EDITH MAE GRACEY,
PETITIONER

VS.

BARBARA M. DAY,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT

OPINIONS BELOW

The Judgment Order of the Third Circuit Court of Appeals appears as Appendix "A" to this Petition. The Order of the District Court appears as Appendix "B". The Order of the Bankruptcy Court appears as Appendix "C".

JURISDICTION

The judgment order of the Court of Appeals (Appendix "A") was entered on August 10,1993. Rehearing (FRAP Rule 40) was denied on September 9, 1993 (Appendix "D"). The Motion for Stay of Mandate was granted on October 19,1993 to file a writ by December 8. Jurisdiction of this court is invoked under Supreme Court Rule 10.1 (a)(c).

CONSTITUTIONAL PROVISIONS, STATUTES INVOLVED

U.S.Constitution,Amendment five provides:

> No person shall be held to answer for a capital,or otherwise infamous crime, unless on a presentment or indictment of a grand jury,except in cases arising in the land or naval forces,or in the malitia,when in actual service in time of war or public danger;nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself,nor be deprived of life,liberty,or property, without due process of law;nor shall private property be taken for public use, without just compensation.

Pa: 42 Pa.C.S.A. 8101: INTEREST ON JUDGMENTS:

> Except as otherwise provided by another statute, a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award.

Pa: 41 P.S. 202: LEGAL RATE OF INTEREST:

> Reference in any law or document enacted or executed heretofore or hereafter to "legal rate of interest" and reference in any document to an obligation to pay a sum of money "with interest" without specification of the applicable rate shall be construed to refer to the rate of interest of six per cent per annum.

STATEMENT OF THE CASE

Two real estate properties of Edith Gracey were sold by the U.S. Bankruptcy Court. Creditor Barbara Day listed a principal amount due of $31,297.24 (based on a judgment lien in Berks County Court in Pennsylvania). Trustee Frederick Reigle, Esquire paid Day a total of $89,387.89. Reigle overpaid Day post-judgment interest using the mortgage contract rate of 14%, instead of using the Pennsylvania statutory post-judgment interest rate of 6%. The overpayment amounts to $35,530.

Gracey filed an objection to the payment to Day of post-judgment interest at the 14% contract rate rather than the Pa. legal post judgment rate of 6% (the contract was silent on the interest rate after default, maturity or confession of judgment). The decision and Order of the Bankruptcy Court changed the issue to the maximum allowed contract interest rate. Gracey appealed to U.S. District Court.

("STATEMENT OF THE CASE"-continued)

The appeal issue of Gracey to the District Court was the post-judgment interest payment to Day at a rate of 14% rather than the statutory rate of 6% (an overpayment of $35,530). Day attempted to switch the appeal issue to the maximum allowable contract rate.

The District Court Schedule For Briefs called for a Gracey Brief, Day Answer Brief, and Gracey Reply Brief. Gracey filed a timely Brief. Appellee Day filed a Brief on 1/12/93. One day later,on 1/13/93, District Court Judge Charles R. Weiner changed the appeal issue to the maximum usury rate and affirmed the Bankruptcy Court. A Gracey Reply was required because the Day Brief contained two critical items: (1) admission that the contract did not include a rate for interest after default; (2) a destructive derogatory tirade against Gracey proceeding pro se. Gracey filed a timely Reply Brief on 1/19/93 but was denied due process because Judge Weiner had already entered his Order.

Gracey appealed the District Court Order to the Third Circuit. Briefs were filed by Gracey and Day. Gracey requested Oral Argument. Oral Argument was denied in the District Court and in the Third Circuit.

Third Circuit Local Rule 11.2 requires,"In all pro se cases the entire record shall be certified and transmitted to the clerk of this Court". The District Court certification of the record shows that, "no original exhibits were attached"; "Pleading # 3 not included" (which is Gracey's Brief); and papers from some other unknown case were included.

The appeal in the Third Circuit was submitted to the Court on 6/23/93. Gracey was denied due process because the decision by the Third Circuit was based on an incomplete record from the District Court. The Judgment Order of Judge Stapleton AFFIRMED and costs were taxed against appellant Gracey.

REASONS FOR GRANTING THE PETITION

I.

GRACEY WAS DENIED DUE PROCESS BECAUSE THE DISTRICT COURT ISSUED THE DECISION BEFORE SUBMITTAL OF HER SCHEDULED REPLY BRIEF

The Fifth Amendment to the U.S.Constitution provides no person shall "be deprived of life, liberty, or property, without due process of law".Gracey had a right to file a Reply Brief. The right to file a Reply Brief is clearly stated in Bankruptcy Rule 8009 (a)(3), and FRAP Rule 28(c). The District Court Briefing Schedule required a Reply Brief be filed by 1/22/93. Gracey filed a timely Reply Brief on 1/19/93. However, Judge Charles R.Weiner had already prejudged the case and entered a decision the day after appellee Day filed a Brief. Day's Brief was filed on 1/12/93 and the Order was entered the next day on 1/13/93. Gracey's right to a Reply Brief was critical since the Day Brief contained an important admission that the contract was silent on the interest rate after default(substantiating the appeal issue that 41 P.S.202 was the controlling law and the interest rate 6%).

The appeal issue is that the controlling laws for payment of post-judgment interest are 42 Pa.C.S.A. 8101 and 41 P.S.202 because the mortgage contract is silent on the interest rate after default. Day admits in the Brief that the mortgage contract matured, that judgment was confessed, and that no specific interest rate was defined after default. The Day Brief admission says, "The parties did not particularly define, in haec verba, any particular rate for interest after default".

That's what this appeal is all about. The core of the appeal is that the contract was silent on interest after default. Therefore, the post-judgment rate of interest is controlled by 41 P.S. 202 which states,

> "...reference in any document to an obligation to pay a sum of money with interest without specification of the applicable rate shall be construed to refer to the rate of interest of six per cent per annum".

Gracey was denied her due process right to bring those critical facts to the attention of the Court through a Reply Brief.

Gracey's right to a Reply Brief was imperative. The District Court did not consider the Reply Brief. The District Court docket is attached as APPENDIX "E" and proves Judge Charles R. Weiner entered the Order on 1/13/93, one day after the Day Brief was filed (item # 5). Gracey was denied her right to due process. As requested by appellee Day, the Court changed the issue to the maximum allowable contract rate and affirmed the Bankruptcy Court.

Gracey was also denied her right to respond to the Day's damaging derogatory personal tirade against Gracey proceeding pro se. Edith Gracey is a nursery school teacher with no legal training at all. Her former attorney has been disbarred and is in a federal prison for twelve years (he is convicted of manufacturing illegal drugs). Gracey is trying to unravel the legal errors and save her home from an unnecessary forced sale by the court. The Reply Brief was not a trivial desire to file one more document. It was a crucial response.

II.

DUE PROCESS WAS DENIED WHEN THE DISTRICT COURT WITHHELD GRACEY'S PORTIONS OF THE RECORD FROM THE THIRD CIRCUIT

In clear violation of FRAP Rule 11(6) the District Court Brief of Gracey was withheld and not included in the Record upon appeal to the Third Circuit. Local Rule 11.2 requires "In all pro se cases the entire record shall be certified and transmitted to the clerk of this court". The entire record was not transmitted. The certification of the District Court clerk (attached as APPENDIX "E-3") states clearly "Pleading #3 not included". "Original exhibits attached: NONE ". The Brief of appellant Gracey was not included in the Record to the Third Circuit and the Gracey Reply Brief was not included. The only part of the Record that was transmitted by the District Court to the Third Circuit appears to be the Brief of Appellee Day. Transmitting only the Day part of the record is highly prejudicial and denies Gracey due process.

The issue of the appeal is the overpayment of $35,530 to creditor Day. The Day Brief contained pivotal admissions which Gracey responded to in her Reply Brief. However, the decision of the District Court was already entered and therefore Judge Weiner did not include the Gracey Reply Brief in the decision making process (APPENDIX "E"). For that reason Gracey requested Oral Argument in the Third Circuit. However,local custom is to deny pro se appellants due process of Oral Argument. This local custom is contrary to the spirit of FRAP Rule 34(a). In the District Court there had been no hearing, no oral argument, no Reply Brief, no complete record sent to the Third Circuit (contrary to Local Rule 11.2 which says "In all pro se cases the entire record shall be certified and transmitted to the clerk of this Court"). The Third Circuit document "INFORMATION FOR PRO SE LITIGANTS" states on page 5: "The judges will very carefully analyze the lower court records".The District Court only transmitted the Day Brief. Gracey was denied Oral Argument to explain.

III.

THE CONTROLLING LAWS ON THE ISSUE OF THE CORRECT RATE OF POST-JUDGMENT INTEREST SHOULD BE 42 Pa.C.S.A 8101 AND 41 P.S.202

Two real estate properties of Edith Gracey were sold by the Bankruptcy Court. Creditor Barbara Day had filed a claim for a principal amount of $31,297. Day originally had a one year mortgage contract at 14% interest but confessed judgment and executed on the Judgment. Trustee Frederick Reigle, Esquire mistakenly overpaid Day post-judgment interest at the contract rate of 14%, instead of the legal post-judgment rate of 6%. The overpayment amounts to $35,530. Gracey objected to the overpayment of post-judgment interest. Day admits the contract did not specify a rate of interest after default or judgment. The controlling law is 42 Pa.C.S.A. 8101 which states,"..a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the judgment". The law in Pennsylvania is 41 P.S. 202 which establishes the rate of interest at 6%.

The cases which follow, other relevant cases, and laws were cited in the original objection of Gracey directly and by reference; included as substantive evidence at hearings; and cited in every document in the Lower Courts. There could be no mistake that the issue was the rate of post-judgment interest paid to Day. However,the Bankruptcy Court changed the issue to the maximum allowable contract rate. The two-part decision is attached as APPENDIX "C". On APPENDIX page "C-2" (footnote 1) the Court says, "Since neither party has provided us with sufficient information to calculate the maximum interest rate permitted to be assessed under 41 P.S.301(b)...". This proves that the contract rate was not even mentioned in any documents by either party because the issue was the post-judgment rate of interest. Other court decisions regarding the post-judgment rate of interest are uniform and consistent: when a contract is silent the lawful interest rate is 6%; controlling law is 42 Pa CSA 8101, 41 PS 202.

Some of the cases cited by Gracey were:

In re:Rorie,98 B.R.219(Bky.EDPA.1989);Judge Fox states,"Unless the mortgage agreement provides otherwise, post-judgment interest accrues at the lawful rate, 42 Pa.CSA 8101, which is defined by 41 P.S. 202 as 6% in Pennsylvania when the contract is silent". The Rorie case involves a residential mortgage contract, just like the Gracey case.

In re: Herbert,86 B.R. 433 (Bky.EDPA.1988), Judge Scholl states, "judgment creditor is entitled to interest on the judgment at the legal rate only, even if the rate of interest on the obligation on which the judgment is entered was greater". Herbert, like Gracey, includes a residential mortgage contract.

Crane Automotive, 98 B.R.236(Bky.WDPA.1989) Judge Bentz states,"Once the Bank reduced its claim to judgment, however, the legal rate of interest applied..". The Day claim involves a Bond and Mortgage just like the Crane case. Both are founded on a confession of judgment.

An important Pennsylvania decision, cited in the previous cases, says, "..it is the judgment itself which causes the law to interpose and regulate the rate of interest".

After Day confessed judgment the interest on that debt was controlled by 42 Pa.C.S.A. 8101 which says: "A judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment". Confession of judgment creates a legal metamorphosis. The debt must be recognized in it's new form.

The Bankruptcy Court Order (APPENDIX "C") and the District Court Order (APPENDIX "B") have ignored the issue of the post-judgment interest rate and changed the issue to the maximum contract rate . The Third Circuit sanctioned the Lower Courts without a complete record (as FRAP Rule 30 requires) and denied Oral Argument (as FRAP Rule 34[a] requires).

This U.S.Supreme Court has ruled that if a creditor is oversecured he is entitled to post-petition interest, but only at the statutory rate determined by each state (U.S. v. Ron Pair Enterprises,Inc.,489 U.S. 235,103 L.Ed2d,290,109 S.Ct.1029(1989).The Lower Courts did not follow this decision.

Day admits that the one year mortgage matured, that judgment was confessed (Day executed on the Judgment in Berks County Court), and that the contract was silent on the rate of interest after default. The well established post-judgment statutory rate in Pennsylvania is determined by 42 Pa.C.S.A. 8101 and 41 P.S. 202 as 6%. If Day is entitled to post-petition interest the statutory rate would be 6%.

The appeal in the District Court did not take a normal course because the decision was issued before the scheduled Reply Brief was filed which denied the right to due process.

The cases presented by Gracey are from three federal bankruptcy judges in three different districts in Pennsylvania, plus the U.S.Supreme Court. Those decisions, and others, substantiate that Day was overpaid by Trustee Reigle who assumed a rate of 14% applied rather than the statutory rate of 6%. However, the Lower Courts changed the issue to usury and ruled on the maximum contract rate instead of the post-judgment rate of interest.

This pro se appellant was without necessary oral argument. The District Court did not review the Gracey Reply Brief and the Third Circuit reviewed an incomplete record (APPENDIX "E-3") without oral argument.

CONCLUSION

Edith Mae Gracey prays that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

Edith Mae Gracey

Edith Mae Gracey, pro se

APPENDIXES

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 93-1048

EDITH M.GRACEY,
Appellant

v.

BARBARA DAY
FREDERICK L.REIGLE,ESQ.(Trustee);
DALE E.LAPP,ESQ.(Trustee);
FREDERICK J.BAKER,ESQ.Trustee

On Appeal From United States District Court
For the Eastern District of Pennsylvania
(D.C.Civil Action No.92-07237)
District Judge: Honorable Charles R.Weiner

Submitted June 23,1993
BEFORE: STAPLETON,SCIRICA,and GARTH,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the judgment of the district court entered January 14,1993 be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,
(s)WALTER STAPLETON
Circuit Judge
ATTEST:(s)P.Douglas Sisk
Clerk

Dated:August 10,1993

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF: C.A.NO.92-7237
EDITH M.GRACEY BANKRUPTCY NO.84-778T

MEMO/ORDER

WEINER,J. JANUARY 13,1993

Debtor,Edith M.Gracey,appeals from the portion of the Orders of the Bankruptcy Court of September 29,1992 and November 20,1992 which held that the maximum interest rate on residential mortgages which claimant,Barbara Day,may charge debtor under Act 6,Pa.Stat.Ann. tit.41,301(b)is the rate equal to the Monthly Index of Long Term United States Government Bank Yields for preceding calendar month (i.e. the second calendar month preceding the month in which the note was executed) plus an additional two and one-half per cent per annum rounded off to the nearest quarter of one per cent per annum. Debtor contends that the maximum interest rate the claimant is entitled to is the general post-judgment interest rate of 6% per annum contained in Pa.Stat.Ann.tit. 41,201. Debtor is incorrect.

Pa.Stat.Ann.tit.41, 201 states:

> Except as provided in Article III of this act the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars($50,000) or less in all cases where no express contract shall have been made for a less rate shall be six per cent per annum

(emphasis added). Pa.Stat.Ann.tit.41,301(b), which is part of Article III of Act 6,states:

> The maximum lawful rate of interest for residential mortgages,as defined in this act,entered into or contracted for during any calendar month shall be equal to the Monthly Index of Long Term United States Government Bond Yields for the second preceding calendar month plus an additional two and one-half per cent per annum rounded off to the nearest quarter of one per cent per annum.

The debtor admits that the mortgage she gave to claimant is a residential mortgage.Pa. Stat.Ann.tit.41,301(b) specifically provides for the maximum lawful rate of interest for residential mortgages and, therefore,it and not 201 is controlling here.

The parties agree that the debtor gave the residential mortgage to the claimant on September 23,1982 and that the mortgage provides for interest to be assessed at 14%.

The pertinent portion of the August 14,1992 edition of the Pennsylvania Bulletin,vol.12, no.33,which claimant provided to the Bankruptcy Court correctly determined that the 14% rate of interest sought by the claimant does not exceed the maximum rate permitted to be collected under 301.The Order of the Bankruptcy Court entered on November 20,1992 is, therefore, AFFIRMED.

IT IS SO ORDERED.

(s)CHARLES R.WEINER

ENTERED;1/14/93

APPENDIX "C"

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:
~~EDITH~~ M.GRACEY, Case No.84-00778T
Debtor

ORDER

AND NOW,this 29th day of September,1992, it is ORDERED that debtor's objection to the proof of claim filed by Barbara Day ("claimant") is SUSTAINED to the extent that the interest rate sought to be collected by claimant exceeds the maximum interest rate permitted to be assessed under Act 6,41 P.S.101 et seq.see,P2 of this order,infra,[1] and is DENIED in all other respects as the court finds that (1)this loan does not qualify as a "business loan" under 41 P.S.301(f)(v) since claimant has not produced an affidavit signed by debtor which sets forth the intended use of the proceeds,10 Pa.Code 7.2;[2] and (2) the maximum interest rate which claimant may charge debtor under Act 6 is the rate equal to the Monthly Index of Long Term United States Government Bank Yields for the

second preceding calendar month(i.e.the second calendar month preceding the month in which the note was executed) plus an additional two and one-half per cent per annum rounded off to the nearest quarter of one per cent per annum[3] 41 P.S.301(b);Gringsby v. Thorp Consumer Discount Company (In re Gringsby),Adv.No. 90-0415,Case No.90-10990S(Bankr.E.D.Pa.October 3,1990);and (3) all other objections raised by debtor are without merit.

Reading,PA

(s)Thomas M.Twardowski
Bankruptcy Judge

FOOTNOTES

1.Since neither party has provided us with sufficient information to calculate the maximum interest rate permitted to be assessed under 41P.S.301(b),we cannot determine on this record whether the interest rate actually charged by claimant exceeds this rate and we shall leave it to the parties to calculate this rate.The parties shall submit said calculations by November 2, 1992.

2.This is the only defense raised by claimant in response to debtor's argument that Act 6 limits the interest rate which claimant may charge debtor.Specifically,claimant maintains that the definition of "business loan"found in the regulations codified at 10 Pa.Code 7.2 is written in the disjunctive and therefore requires either a finding that the borrower exercised actual control over the managerial

decisions of the enterprise or an affidavit signed by the borrower setting forth the intended use of the proceeds.We find claimant's argument without merit since a simple review of this regulation reveals that the definition of "business loan" is not written in the disjunctive and none of the cases cited by claimant support claimant's position,see,East Coast Management,Inc.v. McLaughlin,533 F.Supp.439,441-442(E.D.Pa. 1982)(wherein the district court found that the facts in the case before it failed both prongs of the "business loan"test set forth in 10 Pa.Code 7.2);Jungkurth v.Eastern Financial Services,Inc.(In re Jungkurth),74 B.R.323 (Bankr.EDPa.1987);Schlag v Mendelson (Matter of Schlag),60 B.R.749,751(Bankr.WD.Pa.1986) (wherein the bankruptcy court correctly concluded that 41 P.S. 301(f)(i)-(v)[and not 10 Pa.Code 7.2]is written in the disjunctive).
3.As stated previously in note 1.supra, neither claimant nor debtor provided us with sufficient information to calculate the maximum interest rate permitted to be charged in this transaction under 41 P.S.301(b) and we leave it to the parties to calculate this rate.

"C-4"

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:
EDITH M.GRACEY,debtor : Case No.84-00778T

ORDER

AND NOW, this 20th day of November,1992 it is ORDERED that debtor's motion for reconsideration of this court's September 29, 1992 order is DENIED as the court finds that no error was committed in our September 29, 1992 order and that order must stand on its merits.[1]

Reading,PA

(s)Thomas M.Twardowski
Bankruptcy Judge

1.Our September 29,1992 order sustained debtor's objection to claimant's proof of claim but only to the extent that the interest rate sought to be collected by claimant exceeded the maximum interest rate permitted to be assessed under Act 6,41 P.S.301(b) contains an exception to the general six percent (6%) interest rate limitation contained in Act 6,41 P.S.201.Specifically,41 P.S.201 states:

> Except as provided in Article III of this act,the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars ($50,000)or less in all cases where no express contract shall have been made for a less rate shall be 6%per annum.

(emphasis supplied). 41 P.S. 301(b), which is part of Article III of Act 6, states:

> The maximum lawful rate of interest for residential mortgages,as defined in this act,entered into or contracted for during any calendar month shall be equal to the Monthly Index of Long Term United States Government Bond Yields for the second preceding calendar month plus an additional two and one-half per cent per annum rounded off to the nearest quarter of one per cent per annum.

Instantly,debtor maintains that the mortgage she gave to claimant is a "residential mortgage"under Act 6 and our September 29,1992order correctly found in debtors favor on this point.However,our September 29,1992 order further correctly found that the maximum lawful rate of interest on residential mortgages must be determined by 41 PS 301(b) and not by 41 P.S.201.See,Gringsby v.Thorp Consumer Discount Company(In re Gringsby, Adv.No.90-10990S(Bankr.EDPA October 3,1990). Although debtor continues to misconstrue the interplay between 41 PS 201 and 301(b),our analysis of this issue was correct and debtor's motion for reconsideration must be denied.We note that the case relied upon by debtor,East Coast Management v.McLaughlin, 533 F.Supp.439(EDPA.1982),did not discuss the interplay between 41 PS 201 and 301(b) and therefore is neither helpful nor controlling.

Finally,we note that,as explained in footnotes 1 and 3 of our September 29,1992 order,neither party provided us with sufficient information at the hearing held on debtor's objection to claimant's proof of claim to enable us to calculate the maximum rate of interest

permitted to be assessed under 41 PS 301(b) and therefore,we could not determine in our September 29,1992 order whether the interest rate sought to be collected by claimant exceeded this rate.In fact,the last sentence on footnote 1 directed the parties to submit their calculations of the appropriate interest rate under 41 PS 301(b) by November 2,1992.

Claimant has now attached as Exhibit"A"to her answer to debtor's motion for reconsideration a copy of the pertinent portion of the August 14,1982 edition of the Pennsylvania Bulletin, vol.12,no.33,which states that the maximum lawful rate of interest for residential mortgages for the month of September 1982 is fifteen and one-half percent(15 1/2 %).As the parties both concede that debtor gave the mortgage to claimant on September 23,1982 and that the mortgage provides for interest to be assessed at fourteen percent(14%),we are now able to determine that the fourteen percent (14%)interest rate sought to be collected by claimant does not exceed the maximum rate permitted to be collected under 41 PS 301(b). Therefore,although debtor's theory that the mortgage she gave to claimant qualified as a "residential mortgage"under Act 6 was correct her claim that the interest rate sought to be collected by claimant violated Act 6 was incorrect and our September 29,1992 order, which sustained debtor's objection to claimant's proof of claim,but only to the extent that the interest rate sought to be collected by claimant exceeds the maximum interest rate permitted to be assessed under Act 6,41 PS 301(b),was correctly decided and need not be modified on reconsideration.

APPENDIX "D"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 93-1048

EDITH M. GRACEY,
Appellant

v.

BARBARA DAY
FREDERICK L. REIGLE,ESQ.(Trustee);
DALE E. LAPP,ESQ.(Trustee);
FREDERICK J. BAKER,ESQ.Trustee

SUR PETITION FOR REHEARING

BEFORE: SLOVITER, CHIEF JUDGE, BECKER, STAPELTON MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, and GARTH,
Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT
(s) Walter K.Stapleton
Circuit Judge

Dated: SEP 9-1993

APPENDIX "E"

U.S.DISTRICT COURT DOCKET:CASE 92cv7237

Proceedings include all events. f-ST

2:92cv7237 GRACEY,et al v. DAY

12/17/92 1 Certificate of Appeal of Edith M. Gracey from the Order of Bankruptcy Judge Thomas M.Twardowski,11/20/92 Appellant's brief due 1/1/93 for EDITH M.GRACEY(cj)[entry 12/18/92]

12/17/92 2 Briefing Schedule:mailed to counsel 12/18/92(cj) [entry date 12/18/92]

12/17/92 --Standard Case Management Track.(cj) [Entry date 12/18/92]

1/4/93 3 Appellants brief by APPELLANT EDITH M.GRACEY.(lm)[Entry date 01/05/93]

1/12/93 4 Appellees brief by APPELLEE BARBARA DAY,certificate of service.(sl)

1/13/93 5 MEMO/ORDER THAT THE BANKRUPTCY COURT CORRECTLY DETERMINED THAT THE 14% RATE OF INTEREST SOUGHT BY THE CLAIMANT DOES NOT EXCEED THE MAXIMUM RATE PERMITTED TO BE COLLECTED UNDER SECTION 301.

APPENDIX "E-2"(DISTRICT DOCKET-cont.)

THE ORDER OF THE BANKRUPTCY COURT ENTERED ON 11/20/92 IS,THEREFORE AFFIRMED.(SIGNED BY JUDGE CHARLES R.WEINER) 1/14/93 ENTERED AND COPIES MAILED.(sl) [Entry 1/14/93]

1/13/93 -- All papers from C.A.92-7380 have been placed in C.A.92-7237 pursuant to order filed on 1/13/93.(sl) [Entry date 01/14/93]

1/13/93 -- Case closed(kv)[Entry date 1/21/93

1/19/93 6 Reply brief by APPELLANT EDITH M. GRACEY,certificate of service (sl)

1/19/93 7 Notice of appeal by APPELLANT EDITH M.GRACEY.Fee Status:paid.Appeal record due on 2/18/93.Copies to JUDGE CHARLES R.WEINER,Clerk USCA, Appeals Clerk,and GRACEY,E.,JOSEPH SIMMONS,HON.BRUCE I.FOX,HON.DAVID A SCHOLL,HON.THOMAS M.TWARDOWSKI, FREDERIC J.BAKER,DALE E.LAPP, FREDERICK L.REIGLE,MARK L.TUNNELL, EDITH M.GRACEY (sl)[Entry 1/20/93]

APPENDIX "E-3"
("DISTRICT COURT DOCKET"-continued)

1/19/93	8	Copy of Clerk's notice to USCA re: [7-1] appeal.(sl) [Entry 1/20/93]
1/26/93	9	Copy of TPO form.[7-1] appeal(sl)
1/26/93	--	Notice of Docketing ROA from USCA Re:[7-1]appeal USCA NUMBER:93-1048 1/25/93 (sl) [Entry date 1/27/93]

RECORD CERTIFIED:DISTRICT COURT CASE 92-7237

I, MICHAEL E. KUNZ Clerk of the United States District Court in and for the Eastern District of Pennsylvania,do hereby CERTIFY that the foregoing copy of the docket entries is a true copy and that the annexed and foregoing are the original papers filed in this case.

I FURTHER CERTIFY that the following original exhibits are attached: None

(Pleading # 3 not included) (Papers from C.A. # 92-7380 placed in C.A.92-7237 pursuant to order filed 1/13/93 are included)

By:(s)Mary L. McKenna
Deputy Clerk

2/23/93

Supreme Court, U.S.
FILED
JAN 6 1994
OFFICE OF THE CLERK

No. 93-877

In The

Supreme Court of the United States

October Term, 1993

EDITH M. GRACEY,

Petitioner,

vs.

BARBARA M. DAY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

MARK L. TUNNELL
Counsel of Record
GAWTHROP, GREENWOOD
& HALSTED
A Professional Corporation
Attorneys for Respondent
119 North High Street
West Chester, PA 19381-0562
(215) 696-8225

4655
Lutz Appellate Services, inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals for the Third Circuit has departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to justify the Supreme Court's power of supervision.

2. Whether alleged errors pertaining to consideration of briefs or transmittal of the record on appeal constitute anything other than harmless error.

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents ii

Table of Citations iii

Opinions Below 1

Statement of Jurisdiction 2

Rules and Statutory Provisions Involved 3

Statement of the Case 4

Summary of Argument 6

Reasons for Denying the Writ 7

I. The United States Court of Appeals for the Third Circuit has not departed from the accepted and usual course of judicial proceedings, nor has it sanctioned such a departure by a lower court. 7

II. Alleged errors pertaining to consideration of briefs or transmittals of the record on appeal, if in existence, constitute nothing other than harmless error. 10

Conclusion 12

Contents

Page

TABLE OF CITATIONS

Cases Cited:

Gracey v. Day, No. A-928, 487 U.S. 1202 (June 20, 1988) 5

Gracey v. Day, Nos. 88-137, A-95, 488 U.S. 880 (October 3, 1988) 5

Gracey v. Day, No. 88-137, 488 U.S. 950 (November 7, 1988) 5

Gracey v. Day, No. 88-1934, 492 U.S. 920 (July 3, 1989) 5

Gracey v. Day, et al., No. 93-1048 (3d Cir. June 3, 1993) 1

Gracey v. Day, et al., No. 93-1048 (3d Cir. Sept. 9, 1993) 1

Gracey v. Riegle, No. 90-637, 498 U.S. 1012 (December 10, 1990) 5

Gracey v. Riegle, No. 90-1906, __ U.S. __, 112 S. Ct. 77 (October 7, 1991) 4

Gracey v. United States, No. A-610, 480 U.S. 913 (March 9, 1987) 5

Contents

Page

Gracey v. United States, No. 87-406, 484 U.S. 914 (October 19, 1987) 5

Gracey v. United States, No. 87-406, 484 U.S. 982 (December 7, 1987) 5

In re Gracey, No. 84-0778T (Bankr., E.D. Pa. Sept. 29, 1992) 2

In re Gracey, No. 84-0778T (Bankr., E.D. Pa. Nov. 20, 1992) 2

In re Gracey, No. 92-7237 (E.D. Pa. Jan. 14, 1993) 2

In re Gracey, No. 92-7380 (E.D. Pa. Jan. 14, 1993) 2

In re: Jeanette Corp., 832 F.2d 43, 9 F.R.S. 3d 412 (3rd. Cir. 1987) 2

Statutes Cited:

Pa. Stat. Ann. tit. 41, § 201 3

Pa. Stat. Ann. tit. 41, § 301(b) 3

11 U.S.C. § 547 5

28 U.S.C. § 158(a) 2

28 U.S.C. § 158(d) 2

28 U.S.C. § 1254(1) 2

Contents

Page

United States Constitution Cited:

Article III, Section Two 2

Rules Cited:

Bankruptcy Rule 9005 ..... 4, 10

Fed. R Civ. P. 61 ..... 3, 4, 10

Sup. Ct. R. 15.6 4

Sup. Ct. R. 15.7 10

APPENDIX

Appendix A — Order of the United States District Court for the Eastern District of Pennsylvania Filed November 19, 1987 ..... 1a

Appendix B — Order of the United States Court of Appeals for the Third Circuit Dated August 1, 1989 ..... 2a

Appendix C — Table of Contents to Petitioner's Appendix Submitted to the United States Court of Appeals for the Third Circuit 3a

No. 93-877

In The

Supreme Court of the United States

October Term, 1993

EDITH M. GRACEY,

Petitioner,

vs.

BARBARA M. DAY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

Gracey v. Day, et al., No. 93-1048 (3d Cir. Sept. 9, 1993) (Petition for rehearing denied);

Gracey v. Day, et al., No. 93-1048 (3d Cir. June 23, 1993) (affirming E.D. Pa. Order of Jan. 14, 1993);

In re Gracey, No. 92-7237 (E.D. Pa. Jan. 14, 1993) (affirming Bankr., E.D. Pa. Order of Nov. 20, 1993);

In re Gracey, No. 92-7380 (E.D. Pa. Jan. 14, 1993) (dismissing erroneously docketed appeal);

In re Gracey, No. 84-0778T (Bankr., E.D. Pa. Nov. 20, 1992) (denying Gracey's motion for reconsideration, and establishing 14% interest rate as valid under Pennsylvania law.);

In re Gracey, No. 84-0778T (Bankr., E.D. Pa. Sept. 29, 1992) (sustaining Gracey's objection to interest rate insofar as it may exceed rate permitted under Pennsylvania law).

STATEMENT OF JURISDICTION

The United States District Court for the Eastern District of Pennsylvania had jurisdiction to hear the appeal of a final order and decree entered by the U.S. Bankruptcy Court for the Eastern District of Pennsylvania in proceedings under Title 11 of the United States Code, under the authority of 28 U.S.C. § 158(a).

The Court of Appeals for the Third Circuit had jurisdiction to hear this matter as an appeal from a final decision, judgment or order entered under Title 11 of the United States Code, by virtue of the authority of 28 U.S.C. § 158(d). *In re: Jeanette Corp.*, 832 F.2d 43, 9 F.R.S. 3d. 412 (3rd. Cir. 1987).

The Supreme Court of the United States has jurisdiction to hear this matter pursuant to Article III, Section Two of the United States Constitution as it is a case arising under the Laws of the United States. The Supreme Court of the United States may choose to review this matter by writ of certiorari granted upon the petition of any party pursuant to 28 U.S.C. § 1254(1).

RULES AND STATUTORY PROVISIONS INVOLVED

Pa. Stat. Ann. tit. 41, § 201:

> Except as provided in Article III of this act, the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars ($50,000.00) or less in all cases where no express contract shall have been made for a less rate shall be six percent per annum.

Pa. Stat. Ann. tit. 41, § 301(b):

> The maximum lawful rate of interest for residential mortgages, as defined in this act, entered into or contracted for during any calendar month shall be equal to the Monthly Index of Long Term United States Government Bond Yields for the second preceding calendar month plus an additional two and one-half percent per annum rounded off to the nearest quarter of one percent per annum.

Fed. R. Civ. P. 61:

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must

> disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Bankruptcy Rule 9005:

> Rule 61 F.R. Civ. P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.

Sup. Ct. R. 15.6:

> A reply brief addressed to arguments first raised in the brief in opposition may be filed by any petitioner, but distribution and consideration by the Court under paragraph .5 of this Rule will not be delayed pending its filing. Forty copies of the reply brief, prepared in accordance with Rule 33 and served as prescribed by Rule 29, shall be filed.

STATEMENT OF THE CASE

The Petitioner's request for certiorari to the United States Court of Appeals for the Third Circuit in this matter represents that party's tenth such petition or related request for relief presented before your Honorable Court. All stem from the Petitioner's proceeding in bankruptcy before the United States Bankruptcy Court for the Eastern District of Pennsylvania, and thus far all have been denied. The citations are as follows:

Gracey v. Riegle, No. 90-1906, ___ U.S. ___, 112 S. Ct. 77 (October 7, 1991) (denial of cert.);

Gracey v. Riegle, No. 90-637, 498 U.S. 1012 (December 10, 1990) (denial of cert.);

Gracey v. Day, No. 88-1934, 492 U.S. 920 (July 3, 1989) (denial of cert.);

Gracey v. Day, No. 88-137, 488 U.S. 950 (November 7, 1988) (denial of reh'g);

Gracey v. Day, Nos. 88-137, A-95, 488 U.S. 880 (October 3, 1988) (denial of cert., denial of stay);

Gracey v. Day, No. A-928, 487 U.S. 1202 (June 20, 1988) (denial of injunction, other relief);

Gracey v. United States, No. 87-406, 484 U.S. 982 (December 7, 1987) (denial of reh'g);

Gracey v. United States, No. 87-406, 484 U.S. 914 (October 19, 1987) (denial of cert.);

Gracey v. United States, No. A-610, 480 U.S. 913 (March 9, 1987) (denial of stay).

The instant issue concerns the interest due on a mortgage. The Petitioner, Edith M. Gracey, challenged the 14% rate of interest specified in the mortgage instrument. There is no dispute that the Petitioner did not pay the principal amount with accrued interest on the due date, and accordingly the Note and consensual lien were in default after September 23, 1983. The Respondent/mortgagee, Barbara M. Day, a secured creditor, never foreclosed on the mortgage. An earlier confessed judgment on the note was never executed upon; rather, it was stayed and avoided by the Petitioner by operation of 11 U.S.C. § 547. In determining the propriety of the mortgage rate, The United States Bankruptcy Court for the Eastern

District of Pennsylvania looked to the maximum interest rate allowable under state law at the time the mortgage was executed. That Court's November 20, 1992 Order (Petitioner's Appendix, C4-6) found the 14% interest rate under the mortgage to be valid.

Petitioner appealed to the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit, both of which affirmed the Bankruptcy Court's findings (Petitioner's Appendix, A, B1-3).

SUMMARY OF ARGUMENT

The United States Bankruptcy Court for the Eastern District of Pennsylvania, the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit correctly interpreted the interplay between Pennsylvania statutes providing for the regulation of interest rates. No valid constitutional questions are in issue. There was no departure from the accepted and usual course of judicial proceedings conducted by or sanctioned by the Third Circuit, and any error cited by the petitioner falls far short of creating a procedural due process issue. Error, if any, lies within the ambit of "harmless error" as defined by the Federal Rules of Civil Procedure.

REASONS FOR DENYING THE WRIT

I.

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT HAS NOT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, NOR HAS IT SANCTIONED SUCH A DEPARTURE BY A LOWER COURT.

The Third Circuit properly affirmed the findings of the lower court. While the Petitioner is unhappy with the result, that alone does not create an issue ripe for determination by this Honorable Court. The only departure from the usual course of judicial proceedings sanctioned by the Third Circuit and the lower courts has occurred in favor of the Petitioner.

The present proceeding is the culmination of the third Objection filed by the Petitioner against the Respondent's Proof of Claim in the Bankruptcy Court on April 24, 1992. Respondent's Proof of Claim was filed more than six years before, on November 22, 1985.

Petitioner's propensity for filing frivolous and unwarranted appeals led the United States District Court for the Eastern District of Pennsylvania, on November 18, 1987 to permanently enjoin her from filing interlocutory appeals and motions from nonappealable orders. Respondent's Appendix A. On August 1, 1989 the Third Circuit granted the Respondent attorney's fees as just damages for the Petitioner's continuing frivolous appeals. Respondent's Appendix B.

Nonetheless, the courts below have again shown patience and restraint, allowing the Petitioner to undertake her latest legal maneuvers, granting her as a *pro se* litigant every opportunity to make her case.

Petitioner asserts that the Bankruptcy Court "changed the issue" from that which she wished to argue. Petition at 3. However, Petitioner's "issue" was found to be without legal merit. On appeal, the United States District Court for the Eastern District of Pennsylvania succinctly explained the Bankruptcy Court's November 20, 1992 holding as it regards Pennsylvania law:

> Debtor contends that the maximum interest rate the claimant is entitled to is the general post judgment interest rate of 6% per annum. contained in Pa.Stat.Ann. tit. 41, § 201. Debtor is incorrect.
>
> Pa.Stat.Ann. tit. 41 § 201 states:
>
> *Except as provided in Article III of this act,* the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars ($50,000.00) or less in all cases where no express contract shall have been made for a less rare shall be six percent per annum.

(emphasis added). Pa. Stat. Ann. tit. 41, § 301(b), which is part of Article III of Act 6, states:

> The maximum lawful rate of interest for residential mortgages, as defined in this act, entered into or contracted for during any calendar month shall be equal to the Monthly Index of Long Term United States Government Bond Yields for the second preceding calendar month plus

> an additional two and one-half percent per annum rounded off to the nearest quarter of one percent per annum.
>
> The debtor admits that the mortgage she gave to claimant is a residential mortgage. Pa. Stat. Ann. tit. 41, § 301(b) specifically provides for the maximum lawful rate of interest for residential mortgages and, therefor, it and not § 201 is controlling here.
>
> The parties agree that the debtor gave the residential mortgage to the claimant on September 23, 1982 and that the mortgage provides for interest to be assessed at 14%. The pertinent portion of the August 14, 1982 edition of the Pennsylvania Bulletin, vol. 12, no. 33, which claimant provided to the Bankruptcy Court, states that the maximum lawful rate of interest for residential mortgages for the month of September 1982 is 15.5%. Accordingly, the Bankruptcy Court correctly determined that the 14% rate of interest sought by the claimant does not exceed the maximum rate permitted to be collected under § 301.

Petitioner's Appendix at B-1 - B-3.

The Petitioner's third set of Objections to Respondent's claim in bankruptcy was carefully considered by the courts below. Petitioner received every benefit to be afforded a *pro se* litigator, and her position was found to be without legal grounds.

II.

ALLEGED ERRORS PERTAINING TO CONSIDERATION OF BRIEFS OR TRANSMITTALS OF THE RECORD ON APPEAL, IF IN EXISTENCE, CONSTITUTE NOTHING OTHER THAN HARMLESS ERROR.

Fed. R. Civ. P. 61 mandates that "[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." Bankruptcy Rule 9005 applies this rule to cases under the Bankruptcy Code. Petitioner makes two apparent due process claims concerning alleged errors, none of which affects the substantial rights of the parties. They will be addressed *seriatim.*

Petitioner first claims that her rights to due process were denied as the United States District Court issued its Order affirming the Bankruptcy Court's judgment before receiving Petitioner's reply brief. Petitioner cites no case law for her proposition that consideration of a reply brief is constitutionally required. If such a proposition is valid, it would be incongruous that the Supreme Court's own rules do not require court consideration of a reply brief. For instance, Supreme Court Rule 15.7, regarding replies to a brief in opposition to certiorari, states the following:

> A reply brief addressed to arguments first raised in the brief in opposition may be filed by any petitioner, *but distribution and consideration by the Court . . . will not be delayed pending its filing.*

(emphasis added). A court *may* consider a reply brief. The Petitioner raises no colorable claim to suggest that it must.

Second, Petitioner claims that a portion of the record, specifically one of her briefs to the district court, was improperly omitted from the record transferred to the Third Circuit. She does not say how the presence of this particular brief would have changed the outcome on appeal. In fact, the Third Circuit has had a very good grasp of Petitioner's unvarying legal arguments over the years. Moreover, the Petitioner herself included with her brief to the Third Circuit a 149-page appendix which contained the allegedly missing district court brief. The table of contents to the Petitioner's Third Circuit appendix, attached hereto as Respondent's Appendix C, shows that the Petitioner included her district court brief at page 82.

The petitioner also raised the missing brief issue before the Third Circuit in her Amended Petition for Rehearing. The Third Circuit denied rehearing by Order of September 9, 1993. Petitioner's Appendix at D. Petitioner has received the process to which she is due.

CONCLUSION

The Petitioner has failed to raise any colorable constitutional issues before this Honorable Court, and has further failed to show that the Third Circuit either departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court. Her case in bankruptcy has continued now for more than eight years. The Petition for Certiorari should be denied.

Respectfully submitted,

MARK L. TUNNELL
Counsel of Record
GAWTHROP, GREENWOOD
& HALSTED
A Professional Corporation
Attorneys for Respondent
119 North High Street
West Chester, PA 19381-0562
(215) 696-8225

APPENDIX A — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA FILED NOVEMBER 19, 1987

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BANKRUPTCY NO. 84-00778T

CIVIL ACTION NO. 87-7080W

IN RE:

EDITH M. GRACEY, Debtor

ORDER

AND NOW, this 18th day of November, 1987, the debtor, Edith W. Gracey, appearing *pro se*, is hereby permanently enjoined from filing any interlocutory appeal or other motion from a nonappealable order unless she first presents a copy thereof to the undersigned and receives approval for its filing in writing.

The Clerk shall be notified to refuse such documents aforesaid unaccompanied by the written approval of the undersigned.

BY THE COURT,

s/ Charles R. Weiner
J.

ENTERED: 11/19/87

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED AUGUST 1, 1989

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 89-8016 July 26, 1989

IN RE:
EDITH M. GRACEY, Appellant

Present: BECKER, GREENBERG and SEITZ, *Circuit Judges*.

Motion of Appellee Barbara M. Day for Award of Counsel Fees as Just Damages for Continuing Frivolous Appeals,

Answer of Appellant to Above Motion,

s/ Gretchen A. Thompson
Deputy Clerk 7-1092

ORDER

The foregoing Motion is granted. Appellant shall pay to appellee the sum of $2,031.25 in counsel fees and expenses.

By the Court,
s/ Edward R. Baker
Circuit Judge

Dated: August 1, 1989
GT/cc: Ms. Edith M. Gracey
Mark Tunnell, Esq.
Frederick Reigle, Esq.
Kurt Althouse, Esq.

APPENDIX C — TABLE OF CONTENTS TO PETITIONER'S APPENDIX SUBMITTED TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

APPENDIX OF APPELLANT GRACEY

TABLE OF CONTENTS

Page	*Document*
i.	NOTICE OF APPEAL TO THIRD CIRCUIT.
ii	COPY OF DISTRICT COURT DOCKET-CIVIL NO. 92-7237
1.	OBJECTION OF DEBTOR TO CLAIM OF BARBARA M. DAY (CLAIM #17).
13.	DEBTOR'S REPLY TO: "ANSWER OF BARBARA DAY TO DEBTOR'S OBJECTION".
24.	MEMORANDUM OF LAW FOR DEBTOR GRACEY.
42.	ORDER of September 29, 1992 SUSTAINING DEBTOR'S OBJECTION IN PART.
44.	MOTION FOR RECONSIDERATION OF ORDER DATED SEPTEMBER 29, 1992.
53.	REPLY OF DEBTOR TO: "ANSWER OF DAY TO MOTION FOR RECONSIDERATION" AND "INTEREST CALCULATIONS DUE NOVEMBER 2, 1992".
61.	AMENDED REPLY OF DEBTOR TO "ANSWER OF DAY TO RECONSIDERATION".
62.	GRACEY "ENTRY OF APPEARANCE FORM" from November 5, 1992 hearing.

Appendix C

EVIDENCE admitted by BENCH ORDER at hearing on November 5, 1992:

65. "(D-1)" *SETTLEMENT SHEET* (Proof of payment to Day of $61,116.89).

68. "(D-2)" *SETTLEMENT SHEET* (Proof of payment to Day of $28,271.09)

70. "(D-3)" *DAY CONTRACT* (Proof that the contract is silent regarding any post-judgment interest rate).

78. ORDER of November 20, 1992 (which discusses the CONTRACT rate RATHER THAN the objection issue which was the POST-JUDGMENT rate).

80. OBJECTION OF APPELLANT GRACEY TO APPELLEE DAY'S "STATEMENT OF ISSUES" (Day switched the appeal issue to contract rate).

81. NOTICE OF APPEAL TO THE DISTRICT COURT.

82. DISTRICT COURT BRIEF OF APPELLANT GRACEY.

93. DISTRICT COURT BRIEF OF APPELLEE DAY.

121. DISTRICT COURT REPLY BRIEF OF GRACEY.

134. TRANSCRIPT: November 5, 1992 Bankruptcy hearing.

141. "STATEMENT OF THE ISSUES" OF GRACEY (POST-JUDGMENT RATE).

142. "STATEMENT OF THE ISSUES" OF DAY (MAXIMUM CONTRACT RATE).

143. OBJECTION OF APPELLANT GRACEY TO DAY SWITCHING THE APPEAL ISSUE.

144. DISTRICT COURT ORDER OF JANUARY 14, 1993.

146. BANKRUPTCY COURT ORDERS: Sept. 29, 1992 and Nov. 20, 1992.